

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.L.P..No. 480 of 2007()

ST.156/2004 of J.M.F.C.-IV, KOCHI
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PETITIONER/COMPLAINANT:

ICICI BANK LTD, EMGEE SQUARE,
NEAR PADMA JN, M.G. ROAD, ERNAKULAM,
REP. BY ITS PRINCIPAL OFFICER,
MR. MANOJ PANICKER.

BY ADV. SRI. KKM. SHERIF
SRI. P.A. MOHAMMED ASHROF
SRI. LAL K. JOSEPH
SRI. A.A. ZIYAD RAHMAN
SMT. SHEENA SAMUEL

RESPONDENTS:

1. G.R. BIJU, THOTTUKADAVIL HOUSE,
PAMPYMPPOO, EDAKOCHI.
2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R2-BY P.P. SRI. C.M. KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD
ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.480 OF 2007

Dated this the 23rd day of July, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in S.T.No.156/2004 on the file of the Judicial Magistrate of First Class-IV, Kochi. It was stated in the complaint filed by the petitioner Bank that the 1st respondent had taken a loan from them and in discharge of that loan amount, the 1st respondent had given three post dated cheques and when that cheques were presented, the same were dishonoured on the ground of insufficiency of funds with the account of the 1st respondent. After complying the statutory provisions regarding notice and on seeing that the amount has not been repaid, the complaint has been filed before the court alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act. To prove the case against the 1st respondent, PW1 was examined before the court, claiming that he is the power of attorney holder of the petitioner Bank, though the document produced before the court was only an attested copy of the power of attorney deed. On behalf of the petitioner Bank, Exts.P1 to P16 were also produced. After closing the evidence adduced for

and on behalf of the petitioner, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the prosecution case against the 1st respondent, he had stated that he had taken loan for a vehicle on the basis of hypothetical agreement and while availing loan it was agreed as per the agreement that the amount shall be repaid by instalments. At the time of availing the loan, the petitioner insisted for giving signed blank cheques for recovery of the instalments. Since some of the instalments defaulted by the 1st respondent, the vehicle has been repossessed and thereafter earlier post dated cheques were presented for encashment. Hence the complaint has been filed before the court alleging that the 1st respondent had committed the offence. To prove that case, the 1st respondent was examined as DW1 and also relied on Exts.D1 and D2. After considering the entire evidence, the trial court found that the petitioner failed to prove that there exists any consideration for the issuance of the cheques in question. That apart, the petitioner failed to prove the case against the 1st respondent and the 1st respondent had issued the cheques in question in discharge of any legally enforceable debt. The post dated cheques given by the 1st respondent in pursuance of the agreement will not create any offence under Section 138 of the

N.I.Act.

In the above circumstances, this Court is of the view that the trial court had fully considered the evidence and the judgment of the trial court is on that evidence. If so, the judgment of the trial court does not require any interference.

Accordingly, the petition for leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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